

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

HON. SAM J. MYERS

CLERK OF THE COURT
B. Navarro
Deputy

STATE OF ARIZONA

JESSI WADE
JESSICA ANN GATTUSO

v.

JERROLD MICAH BURNETT (001)

VIKKI M LILES
DAVID J KEPHART

CAPITAL CASE MANAGER
COURT ADMIN-CRIMINAL-CCC
JUDGE MAHONEY
JUDGE VIOLA

CAPITAL CASE ASSIGNMENT AND SCHEDULING ORDER

9:52 a.m. This is the time set for a Status Conference.

Courtroom 6A SCT

State's Attorney:	Jessi Wade
Victim's Attorney:	Jessica Gattuso
Defendant's Attorney:	Vikki M. Liles and David J. Kephart
Defendant:	Present

Court Reporter, Rochelle Dobbins, is present.

A record of the proceeding is also made by audio and/or videotape.

The State has filed a notice seeking the death penalty. Rule 8.2(a)(4), Arizona Rules of Criminal Procedure, requires capital cases to be resolved within twenty-four (24) months from the date the State files a notice of intent to seek the death penalty pursuant to Rule 15.1(i).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

Article II, § 2.1 (10), Constitution of the Arizona, guarantees each victim the right to a speedy trial. The Notice of Intent to Seek the Death Penalty was filed on **February 22, 2016**.

Rule 1.2, Arizona Rules of Criminal Procedure, provides:

These rules are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

The Arizona Rules of Criminal Procedure will be enforced to achieve those goals. Material facts and exhibits not disclosed may be precluded. Failure to timely disclose information required to be disclosed pursuant to Rules 15.1 and 15.2, Arizona Rules of Criminal Procedure, may result in sanctions being imposed. Counsel should assure that their respective disclosure statements and supplements are complete and comprehensive.

This Court has an obligation to facilitate that capital cases are tried in a timely manner by prepared counsel meeting qualifications set by the Supreme Court.

The Court confers with Ms. Liles.

THE COURT FINDS that Vikki Liles meets the qualifications set forth in Rule 6.8.

IT IS THEREFORE ORDERED affirming the appointment of Vikki Liles.

The Court confers with Mr. Kephart.

THE COURT FINDS that David Kephart meets the qualifications set forth in Rule 6.8.

IT IS THEREFORE ORDERED affirming the appointment of David Kephart.

IT IS HEREBY ORDERED setting the last day as **February 22, 2018**.

IT IS FURTHER ORDERED pursuant to A.R.S. §§ 13-753 and 13-754, that Defendant undergo IQ, competency and sanity prescreening evaluations. In the event an objection to the testing is not filed by Defendant within ten business days of the date of this minute entry, the assigned trial judge will appoint one or more experts to conduct the prescreening evaluations regarding Defendant's intelligence quotient, competency to stand trial and whether Defendant was sane at the time Defendant allegedly committed the charged crime(s). A copy of any objection should be delivered to the assigned trial judge.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

IT IS FURTHER ORDERED setting Trial for January 19, 2018 at 9:30 a.m. (see “Later” for correct date) before Judge Mahoney. This is a firm trial date and will not be continued absent a “showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.” *See* Rules 8.2(d) and 8.5(b), Arizona Rules of Criminal Procedure. The trial date is being set early in the case to assist assigned counsel in resolving any scheduling conflicts.

Each retained expert should be informed of the trial date to confirm their availability in the event that the expert becomes a testifying witness. If an expert witness is not available at the time of trial, counsel should arrange to take a videotape deposition for presentation of that expert witness’ testimony to the jury.

IT IS FURTHER ORDERED that the assigned judge shall not grant a continuance to the trial date beyond the current last day. Any motion to continue the trial date beyond the current last day must be submitted to the Presiding Criminal Judge or his/her designee.

IT IS FURTHER ORDERED reassigning this case from Judge Danielle Viola to **Judge Margaret Mahoney**. The assigned judge will handle all pretrial matters. In the event the assigned judge is in trial or otherwise unavailable on the trial date, another judge will try the case.

IT IS FURTHER ORDERED that the following disclosure schedule shall apply:

1. The State shall abide by the time limits set forth in Rule 15.1, and in particular, Rule 15.1(i), Arizona Rules of Criminal Procedure.
2. The Defendant shall abide by the time limits set forth in Rule 15.2, and in particular, Rule 15.2(h), Arizona Rules of Criminal Procedure. All mitigation evidence shall be disclosed in accordance with the requirements of Rule 15.2(h).
3. Alternatively, counsel may personally confer and present to the court at the first case management conference a case management plan including a discovery schedule and, by the approval of the court, will be the controlling schedule for the case. The case management plan proposed by counsel must accommodate the above trial date and last day.
4. The disclosure of each expert witness shall be accompanied by at least three dates on which the expert and the disclosing party’s counsel are available for opposing counsel to conduct an interview of the expert witness.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

The schedule established by the Arizona Rules of Criminal Procedure or adopted by the court may be deviated from by written agreement between counsel and approval of the assigned judge, but any deviation from the time limits prescribed by the Arizona Rules of Criminal Procedure or the adopted case management plan shall not affect the last day or trial date.

Evidence, material facts or exhibits not fairly disclosed will not be used during any phase of the trial.

IT IS FURTHER ORDERED that prior to the next scheduled status conference before the assigned judge, counsel who will try the case shall personally meet and decide on a date by which all witness interviews shall be completed. The judge shall include that date in the status conference minute entry. Information obtained during interviews occurring after that date will not be grounds for a continuance of the trial date.

IT IS FURTHER ORDERED that counsel have set and participate in a resolution management conference at least 60 days prior to the final trial management conference. All counsel shall attend the resolution management conference including those who have the authority to settle the case. If the trial attorney must consult with someone in order to obtain authority to settle the case, the person with whom consultation is required shall personally attend the resolution management conference.

IT IS FURTHER ORDERED setting a **Capital Case Management Conference** for **March 22, 2016 at 8:30 a.m.** before Judge Mahoney. The assigned judge shall set subsequent case management conferences not more than every 60 days.

IT IS FURTHER ORDERED that at each case management conference, counsel shall submit a jointly agreed upon written case status report showing the progress made on the case. At a minimum, the report shall set forth the status of all forensic testing and the number of interviews completed. Failure to submit a written report may result in the imposition of sanctions.

At Defendant's counsel's request, an Order for Production of Mitigation Documents pertaining to acquisition of Defendant's records will be signed by the Presiding Criminal Judge and will be available for pickup at the Presiding Criminal Judge's chambers by Defendant's counsel, Defendant's mitigation specialist or an authorized representative of Defendant.

IT IS FURTHER ORDERED that all *ex parte* motions requesting additional orders for acquisition of mitigation evidence shall be submitted to the assigned judge. Should an *ex parte* meeting with the assigned judge to discuss the details of the mitigation work be deemed

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

necessary, defense counsel may make that request pursuant to Rule 15.9(b), Arizona Rules of Criminal Procedure.

IT IS FURTHER ORDERED setting a **Final Trial Management Conference** for **December 15, 2017 at 8:30 a.m. (see "Later" for correct date)** before Judge Mahoney.

IT IS FURTHER ORDERED vacating the following hearing dates:

IT IS FURTHER ORDERED that all materials needing language translation must to submitted to CITS no later than 120 days prior to the final trial management conference. Counsel shall advise CITS of any interpreter needs at trial no later than 60 days before trial. A request for translation services made less than 120 days prior to the final trial management conference will not be considered as a ground for a trial continuance.

IT IS FURTHER ORDERED:

1. No less **than five (5) judicial days prior to the final trial management conference**, counsel shall file:

A. Any trial memoranda (optional), which will be in lieu of post-trial briefs unless otherwise requested by the Court at the conclusion of the trial.

B. Motions *in limine*, which must meet the test of **State v. Superior Court**, 108 Ariz. 396, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." Each motion shall be limited to one issue.

C. A Joint Pretrial Statement (**not optional**). **Objections to exhibits and deposition testimony are deemed waived unless set forth in the Joint Pretrial Statement.**

D. An agreed upon jury questionnaire.

E. Proposed jury instructions. Prior to the due date for the proposed jury instructions, counsel shall personally consult for the purpose of preparing and submitting a joint set of agreed-upon preliminary and final jury instructions and clean copies thereof. If counsel request any non-uniform jury instruction, the Court requests that counsel provide a disk containing all non-uniform jury instructions in Word format.

Non-RAJI (Revised Arizona Jury Instructions – Criminal, 3rd Ed.) instructions should be typed, each on a separate page with a heading (i.e.: Defendant's Instruction No. 2 etc.), and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

provide authority for the instruction. Please number each instruction consecutively, rather than leaving a blank space for someone else (such as the court) to number. Counsel should also submit a clean copy of each non-RAJI instruction.

2. Written response to a motion *in limine* may be filed no later than noon of the day before the final pretrial conference.

3. At least three days before the trial date, the trial lawyers or their knowledgeable assistants shall appear in the trial division to present all exhibits. The exhibits will be marked serially as they are listed in the LIST OF EXHIBITS which will be prepared by counsel and downloaded (saved) onto a CD in Microsoft Word and given to the clerk with the exhibits. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly marked to correspond with the list provided. **Counsel are directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that includes duplicate exhibits.** Counsel should not reserve exhibit numbers for additional exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged. If an objection to an exhibit is not stated in the pretrial statement, all objections are deemed waived and the trial judge will assume the exhibit may be marked directly in evidence.

4. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.

5. All motions other than motions *in limine* shall be filed at least **60 days before the final pretrial management conference** to allow sufficient time for briefing and oral argument. The trial will not be continued because a motion is pending.

6. Expert witnesses should be scheduled to allow sufficient time to complete direct, cross and redirect examinations by 4:30 p.m. If a doctor or other expert witness is scheduled to appear in the afternoon on any trial day, the party calling the witness should consider having the witness plan on returning to court the morning of the next trial day unless all counsel have agreed to a time allocation for completing their questioning by 4:30 p.m. The trial judge will likely not keep the jury later than 4:30 p.m.

IT IS FURTHER ORDERED affirming prior custody orders.

10:01 a.m. Matter concludes.

LATER:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-002430-001 DT

03/01/2016

On the Court's own motion, and because December 15, 2017 and January 19, 2018 are Fridays,

IT IS ORDERED vacating **Trial** set for January 19, 2018 and resetting same for **January 17, 2018 at 9:30 a.m.** before Judge Mahoney.

IT IS FURTHER ORDERED vacating the **Final Trial Management Conference** set for December 15, 2017 and resetting same for **December 18, 2017 at 8:30 a.m.** before Judge Mahoney.